

# Agenda

## Item #8



STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS  
AND ELECTION PRACTICES  
135 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0135

To: Commission Members and Counsel

From: Jonathan Wayne, Executive Director

Date: June 20, 2008

Re: Kenneth Capron's Complaint against Rep. Charles Harlow

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On June 11, 2008, the Commission staff received a complaint from Kenneth Capron of Portland. He is challenging the incumbent, Rep. Charles Harlow, in the 2008 general election for House of Representatives, District 116. Mr. Capron alleges that Rep. Harlow conducted campaign activities within 250 feet of the polling place at Riverton Community Center during the June 10, 2008 primary election. Rep. Harlow's name was on the Democratic primary election ballot, but he did not have an opponent in the primary.

In his complaint, Mr. Capron alleges:

- Rep. Harlow handed out a flyer urging his re-election and wore a Legislative name tag within 250 feet of the polling place.
- Rep. Harlow later left the 250 foot zone, and stopped cars in the driveway to the parking area in order to give them campaign literature.

Mr. Capron alleges that these activities violate 21-A M.R.S.A. § 682 which forbids certain activities within 250 feet of the entrance of a polling place. He also believes the activities violated the Code of Fair Campaign Practices which Mr. Harlow filed on December 13, 2007, specifically the paragraph that condemns "practices that tend to corrupt or undermine the system of free election ...."

Rep. Harlow responded to the complaint with a June 13, 2008 letter explaining that he asked the warden if it was okay to hand out materials when the voters were leaving. According to Rep. Harlow, the warden said it was acceptable, not realizing that Rep. Harlow's name was on the ballot. He also stated that since he did not have a primary election opponent, he did not see that he was influencing anyone's vote. On June 15, Mr. Capron submitted some additional comments that respond to Rep. Harlow's June 13 letter.

The Commission has no jurisdiction over the administration of the voting process, including violations of 21-A M.R.S.A. § 682. Polling places in Maine are administered by municipal clerks with oversight and advice from the Maine Secretary of State's office. Therese Cahill-Low in the office of the Secretary of State advised Mr. Capron in a June 12, 2008 e-mail that the Secretary of State does not have enforcement authority over violations

of the Election Law. She informed Mr. Capron that he might wish to contact the Assistant Attorney General Leanne Robbin, the Chief of Financial Crimes and Civil Rights Division of the State Attorney General's Office, or Assistant Attorney General Phyllis Gardiner.

After conferring with the Commission Chair, I scheduled this matter for your consideration at the June 27 meeting because Mr. Capron alleges that Rep. Harlow's campaigning violated the Code of Fair Campaign Practices. I have explained to Mr. Capron and Representative Harlow that in addition to the substance of the complaint, the Commission may consider at the June 27 meeting the threshold question of whether it has jurisdiction to take any action on the complaint.

## 21-A §682. Political activities

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## 21-A §682. Political activities

Certain activities are prohibited on election day. [2003, c. 447, §22 (RPR) .]

**1. Instruction limited.** Within the voting place, a person may not instruct another in the method of marking the ballot, except as provided in section 672.

[ 2003, c. 447, §22 (RPR) .]

**2. Influence prohibited.** On public property within 250 feet of the entrance to the voting place as well as within the voting place itself, a person may not:

A. Influence another person's decision regarding a candidate or question that is on the ballot for the election that day; or [2005, c. 568, §14 (AMD) .]

B. Attempt to influence another person's decision regarding a candidate or question that is on the ballot for the election that day. [2005, c. 568, §14 (AMD) .]

C. [2003, c. 447, §22 (RP) .]

These limitations do not prohibit a candidate from attending the voting place and orally communicating with voters as long as the candidate does not attempt to influence their vote. A candidate may not state the name of the office sought or request a person's vote.

[ 2005, c. 568, §14 (AMD) .]

**2-A. Application.** This subsection governs the application of subsection 2.

A. Subsection 2 does not apply to pollwatchers, who may remain in the voting place outside the guardrail enclosure as long as they do not attempt to influence voters or interfere with their free passage. [2003, c. 447, §22 (NEW) .]

B. Subsection 2 does not prohibit media representatives from conducting an exit poll, as long as they do not solicit voters until after the voters have voted and do not orally communicate with voters in a way that influences a voter's vote. [2003, c. 447, §22 (NEW) .]

C. If a person attempts to influence voters or interfere with their free passage, the warden shall have that person removed from the voting place. [2003, c. 447, §22 (NEW) .]

[ 2003, c. 447, §22 (NEW) .]

**3. Advertising prohibited.** A person may not display advertising material; operate an advertising

medium, including a sound amplification device; or distribute campaign literature, posters, palm cards, buttons, badges or stickers containing a candidate's name or otherwise intending to influence the opinion of any voter regarding a candidate or question that is on the ballot for the election that day on any public property located within 250 feet of the entrance to either the voting place or the building in which the registrar's office is located. The term "sound amplification device" includes, but is not limited to, sound trucks, loudspeakers and blowhorns.

A. This subsection does not apply to advertising material on automobiles traveling to and from the voting place. It does not prohibit a person from passing out stickers at the voting place to be pasted on the ballot at a primary election. It does not prohibit a person who is at the polls solely for the purpose of voting from wearing a campaign button when the longest dimension of the button does not exceed 3 inches. [2003, c. 447, §22 (RPR).]

B. Nonpolitical charitable activities and other nonpolitical advertising may be allowed at the discretion of the clerk if arrangements are made prior to election day. If arrangements are not made in advance of the election day, the warden may, at the warden's discretion, either allow or prohibit nonpolitical charitable activities and other nonpolitical advertising. [2003, c. 447, §22 (RPR).]

C. [2003, c. 447, §22 (RP).]

[ 2005, c. 568, §15 (AMD) .]

**4. Devices for audible communication.** Party workers or others may not use cellular phones, voice pagers or similar devices to make audible voice communication within the voting place that is in violation of subsection 2.

[ 2003, c. 447, §22 (NEW) .]

**5. Violation.** A person who knowingly engages in activities prohibited by this section commits a Class E crime.

[ 2003, c. 447, §22 (NEW) .]

#### SECTION HISTORY

1985, c. 161, §6 (NEW). 1985, c. 383, §11 (AMD). 1991, c. 466, §20 (AMD). 1993, c. 473, §§19,20 (AMD). 1993, c. 473, §46 (AFF). 1995, c. 459, §§61,62 (AMD). 2001, c. 310, §37 (AMD). 2003, c. 447, §22 (RPR). 2005, c. 568, §§14,15 (AMD).

RECEIVED

JUN 11 2008

MAINE ETHICS COMMISSION

Jonathan Wayne  
Executive Director  
Maine Commission on Governmental Ethics and Election Practices  
135 State House Station  
Augusta, Maine 04333

Dear Mr. Wayne,

My opponent, Charlie Harlow, attempted two violations while at the polls at the Riverton Community Center on Tuesday.

1. Harlow brought with him some campaign materials to hand out at the exit of the poll (attached). He identified himself to the warden, told the warden he had a sheet to hand out but intentionally stated that it was unrelated to the June 10 election. A short while later, as Harlow stood outside the poll, he refused to let me see the material. At that point I asked the warden to review it, which he did. Mr. Harlow was instructed to go outside the 250' campaign free zone. And he did. And from there proceeded to stop cars on the driveway to the parking area to give them the literature.
2. A short while later, Harlow returned to the poll exit, this time wearing his Legislative name tag (the blue and white). He knew this was in violation but told the warden that if I didn't specifically complain, the warden didn't need to take action. The warden quickly signaled to Harlow to remove the tag as soon as I mentioned it's inappropriateness.

Mr. Harlow is an experienced politician and is fully versed in these rules and thus I would assert a deliberate intent on his part to influence voters entering the polls. It is especially noteworthy that once Harlow's options were eliminated, he left the polling place for the remainder of the day. I believe Harlow was in violation of Maine Election Laws §682 by his actions.

I also believe that Mr. Harlow has violated the Code Of Fair Campaign Practices which he signed December 13, 2007. His actions represent, as a minimum, an attempt to undermine the system of free election.

Sincerely,



Kenneth A. Capron  
House District 116 candidate  
1375 Forest Avenue D-11  
Portland, Maine 04103  
Phone: 207-797-7891  
Email: watchdog@maine.rr.com

June 11, 2008

<http://janus.state.me.us/legis/statutes/21-A/title21-Asec682.html>

cc: Secretary of State; Linda Cohen; City Clerk; City of Portland

# State Representative-Charlie Harlow

Integrity, Experience, Results

Re-Elect Charlie Harlow-District 116  
Tax Relief

**Maine Residents Property Tax and Rent "Circuit Breaker" Refund**

**Summary of the Program Beginning August 1, 2007 for Refunds of Property Tax Assessed and Rent Paid During 2008.**

**Over 200,000 Maine households qualify for a partial refund of property tax assessed and/or rent they paid in 2006. The maximum refund available is \$2,000.**

You may qualify for a refund if:

You do not have a spouse or dependent(s) and your 2006 household income was \$80,750 or less; or

- you do have a spouse or dependent(s) and your 2006 household income was \$105,750 or less

**AND**

- Your 2006 property tax was more than 4% of your 2006 household income; or
- The rent you paid in 2006 was more than 20% of your 2006 household income.

NOTE: Seniors do not need to meet this requirement when their household income is below \$13,200 for those living alone or below \$16,300 for those living with a spouse or dependent..

Paid for and approved by Charlie Harlow, 36 Broadway, Treasurer, Sylvia Harlow

2008 Election Year



DEC 13 2007

COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

Mail: 135 State House Station, Augusta, Maine 04333

Office: 242 State Street, Augusta, Maine

Website: [www.maine.gov/ethics](http://www.maine.gov/ethics)

Phone: 207-287-4179

Fax: 207-287-6775

## 2008 MAINE CODE OF FAIR CAMPAIGN PRACTICES

(21-A M.R.S.A. § 1101(2))

I shall conduct my campaign and, to the extent reasonably possible, insist that my supporters conduct themselves, in a manner consistent with the best Maine and American traditions, discussing the issues and presenting my record and policies with sincerity and candor.

I shall uphold the right of every qualified voter to free and equal participation in the election process.

I shall not participate in and I shall condemn defamation of and other attacks on any opposing candidate or party that I do not believe to be truthful, provable and relevant to my campaign.

I shall not use or authorize and I shall condemn material relating to my campaign that falsifies, misrepresents or distorts the facts, including, but not limited to, malicious or unfounded accusations creating or exploiting doubts as to the morality, patriotism or motivations of any party or candidate.

I shall not appeal to and I shall condemn appeals to prejudices based on race, creed, sex or national origin.

I shall not practice and I shall condemn practices that tend to corrupt or undermine the system of free election or that hamper or prevent the free expression of the will of the voters.

I shall promptly and publicly repudiate the support of any individual or group that resorts, on behalf of my candidacy or in opposition to that of an opponent, to methods in violation of the letter or spirit of this code.

I, the undersigned candidate for election to public office in the State of Maine, hereby voluntarily endorse, subscribe to and solemnly pledge to conduct my campaign in accordance with the above principles and practices.

12/13/07  
Date

Charles Harlow  
Candidate's Signature

Rep 116  
Office Sought and District

CHARLES HARLOW  
Printed Name





STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS  
AND ELECTION PRACTICES  
135 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0135

June 11, 2008

**By E-Mail and Regular Mail**

Hon. Charles W. Harlow  
36 Broadway  
Portland, ME 04103

Dear Rep. Harlow:

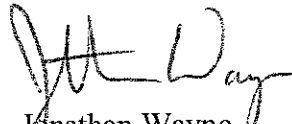
This afternoon, the Ethics Commission received the attached complaint from Kenneth Capron regarding your campaign activities at a polling place yesterday. The complaint alleges that the activities violated 21-A M.R.S.A. § 682 because they were conducted within 250 feet of a polling place. The voting process in Maine is administered by municipal clerks with the advice and oversight of the Maine Secretary of State. The Election Law does not authorize the Ethics Commission to enforce violations of § 682.

Mr. Capron also alleges that your activities violated the attached code of fair campaign practices which you submitted to the Commission on December 13, 2007, particularly your pledge not to engage in "practices that tend to corrupt or undermine the system of free election or that hamper or prevent the free expression of the will of the voters."

The members of the Commission will consider the complaint as it relates to the code at their next meeting on Friday, June 27 at 9:00 a.m. Please submit a response to the complaint no later than Thursday, June 19. I would also suggest that you attend the meeting to respond. As I explained to you by telephone, the Commission members may also consider whether the Commission has jurisdiction to find candidates in violation of the code of fair campaign practices.

If you have any questions, please telephone me at 287-4179.

Sincerely,

  
Jonathan Wayne  
Executive Director

cc: Kenneth A. Capron  
Julie Flynn, Deputy Secretary of State  
Linda Cohen, Portland City Clerk  
Assistant Attorney General Phyllis Gardiner

OFFICE LOCATED AT: 242 STATE STREET, AUGUSTA, MAINE  
WEBSITE: WWW.MAINE.GOV/ETHICS

Mr. Jonathan Wayne  
Executive Director  
Maine Ethics Commission  
135 State House Station  
Augusta, ME 04330

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JUN 13 2008

MAINE ETHICS COMMISSION

Dear Mr. Wayne,

This letter is in response to the complaints from Kenneth Capron regarding activities at the Riverton Polling area on June 10.

**Regarding the handing out of campaign materials at the exit of the polls:**

I do not deny that I was handing out materials outside the voting area after the people had voted. I was unopposed, and did not see how I could be influencing anyone's vote. I was passing out information about the circuit breaker program. I asked the warden if it was ok to hand out materials when the voters were leaving. He said it was okay. One lady took one from me before she voted, and that is how it got in the voting area. She was just interested, and I did not request she take it. I did not know she had not voted. The warden, Mr. Sherwood Merrill, did not realize my name was on the ballot. As soon as he found out our mistake, he asked me to move outside the 250 foot zone, which I did. I did not interfere with traffic. I held up a sheet of paper, and if people wanted to stop, they did. I did not leave the Riverton Polling place because I thought I was doing something wrong when I passed out the sheets 250 feet from the polls. I went to another polling place. I went right to the warden at the second polling location, and he gave me the same information. I had to be 250 feet from the polls, which I adhered to. As you can see, my name and position were listed on the flyer I handed out. I was under the impression that it was necessary to do so in order to identify who was paying for the materials. If you wish to contact the Warden from the Riverton Polls, please call Mr. Sherwood Merrill at 797-6187. Mr. Merrill said it would be fine to call him about this issue.

**Regarding wearing the Legislative nametag:**

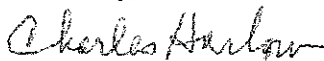
It is true that I did have my State nametag on. I wore it for no devious reason. I made no reference to the nametag to Warden Merrill or anyone else. When the warden asked me to take it off, I did so immediately.

**Regarding a violation of Fair Campaign Practices:**

There was no intent on my part to influence voters or corrupt or undermine free elections. My hope was to help people have quick access to the "Maine Residents Property Tax and Rent Refund". I did not feel that I was violating or preventing the free expression of the voters' will. Mr. Capron and I were both unopposed in the June 10 primary. Some of the people who left with my "Circuit Breaker" flyer, could not have voted for me in this primary election because they were Republicans.

If you have any further questions regarding this before the June 27 meeting, please call me at 207-797-3775.

Sincerely,



Charles Harlow  
House District 116  
36 Broadway  
Portland, ME 04103  
June 11, 2008

**Wayne, Jonathan**

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**From:** Watchdog Maine [watchdog@maine.rr.com]  
**Sent:** Sunday, June 15, 2008 9:29 PM  
**To:** Wayne, Jonathan  
**Cc:** Robbin, Leanne; Gardiner, Phyllis; Flynn, Julie; Linda Cohen  
**Subject:** Harlow's Response to Capron's Complaint

Mr. Wayne,

It concerns me that Mr. Harlow actually contacted a critical witness (the Warden) to the events at hand knowing full well that the matter was under investigation. Harlow's statement "Mr. Merrill said it would be fine to call him about this issue." clearly implies that Harlow had a conversation with Merrill after the complaint. This would appear to be an inappropriate attempt to interfere with or influence the witness, the witness' memory of events or the potential testimony thereof.

Harlow's assertion that he "did not see how [he] could be influencing anyone's vote" weakly implies that ignorance of the law should justify his failure to follow the law. He expects you to believe that he wasn't aware of the possibility of write-in votes. Additionally, when I noticed that he was handing out information, I went to him directly and asked for a copy. He refused to give me a copy and stated something along the line of 'why would I give something of mine to my opponent or to any non-democrat'.

Harlow's assertion that he "did not interfere with traffic" is undermined by two bits of evidence. First, Kirsten Martin, the wife of another Portland candidate, specifically stopped to tell me that Harlow had tried to give her a copy of his "handout" but when she refused, he "just threw it into my car". Kirsten wasn't even there to vote.

Secondly, the attached photograph clearly shows Harlow interfering with traffic.



Harlow also claims "It is true that I did have my State nametag on. I wore it for no devious reason." The obvious questions are - why did he a) bring it and b) have it in his pocket? Is he implying that his nametag accidentally fell out of his pants pocket and fell upward to land upright - snugly in his shirt pocket? It's obvious that he brought it for a reason, and put it on intentionally to gain recognition and influence voters.

As an addendum to the original complaint, Harlow was precluded (as was I) from discussing politics with voters coming or going within the CFZ. Harlow had difficulty with that as evidenced by this item which appeared in the Portland Press Herald on June 14 ([http://pressherald.maine.com/story\\_pf.php?id=193941&ac=PHedi](http://pressherald.maine.com/story_pf.php?id=193941&ac=PHedi)). Here, instead of telling his constituent that he could not discuss an issue that was raised, he chose to insult the individual. Since the author lives and votes in Harlow's district (within a few hundred yards of this poll) and since Harlow was in fact the ONLY State Representative at this specific poll, Harlow's name is implied by the facts of the circumstance.

Additionally, in a now defunct blog from a 2004 campaign, Mary Beth Williams, a Primary opponent of Harlow's, wrote "I lost to a former Mayor (Harlow) and 3 term City Councilor, who ran one of the slimiest campaigns in recent Portland history. Am I angry about that? Sure. But I also know that I'm damned proud of myself and my staff's ability to remain high above the depths to which this man sank, including taking a family tragedy, repackaging it as a

6/20/2008

*scandal and shopping it sub rosa to voters and politicians alike. But those rants are for another time.*" I have confirmed this with Ms. Williams personally.

I would like to make sure that my contest against Harlow is a lot less "slimy".

Sincerely,

Kenneth A. Capron  
House District 116 Candidate  
1375 Forest Avenue D-11  
Portland, Maine 04103  
Phone: 207-797-7891  
Email: [watchdog@maine.rr.com](mailto:watchdog@maine.rr.com)

**Wayne, Jonathan**

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**From:** Watchdog Maine [watchdog@maine.rr.com]  
**Sent:** Thursday, June 12, 2008 8:07 PM  
**To:** Wayne, Jonathan  
**Cc:** Timberlake, Sharon E  
**Subject:** Fw: Attn: Melissa Packard  
**Attachments:** 2008-06-10\_Harlow campaign lit.pdf, 2008-06-10\_Ltr to Ethics Commission.pdf

This is where my complaint has been routed. I will keep you informed.  
 Did you get my fax yesterday?

Ken Capron

----- Original Message -----

**From:** Cahill-Low, Therese  
**To:** Watchdog Maine  
**Cc:** Gardiner, Phyllis ; Robbin, Leanne ; Flynn, Julie  
**Sent:** Thursday, June 12, 2008 4:56 PM  
**Subject:** RE: Attn: Melissa Packard

Mr. Capron,

Thank you for contacting the Secretary of State's office. The Secretary of State (which includes the Election Division) does not have enforcement authority over election law violations – only a District Attorney or the Attorney General can handle such complaints. In this case, I have copied Phyllis Gardiner and Leanne Robbin from the Attorney General's office. You may wish to contact them directly.

If you have any further questions, please don't hesitate to let me know.

Sincerely,

Therese Cahill Low  
 Director of Constituent Services  
 Office of the Secretary of State  
 148 State House Station  
 Augusta, Maine 04333-0148  
 Telephone: (207) 626-8400  
 Fax: (207) 287-8598

---

**From:** Watchdog Maine [mailto:watchdog@maine.rr.com]  
**Sent:** Wednesday, June 11, 2008 1:13 PM  
**To:** Office, SOS  
**Subject:** Attn: Melissa Packard

Dear Melissa,

Sharon Timberlake of the Ethics Commission suggested that I forward the attached complaint to your attention for possible action by the Secretary of State under Maine Election Law §682.

If you need further information to process the complaint, please let me know.

Sincerely,

6/20/2008

Kenneth A. Capron  
Candidate - House District 116  
1375 Forest Avenue D-11  
Portland, Maine 04103  
Phone: 207-797-7891  
Email: [watchdog@maine.rr.com](mailto:watchdog@maine.rr.com)

Subchapter 5: MAINE CODE OF FAIR CAMPAIGN PRACTICES HEADING: PL  
1989, c. 802, §1 (new)

**21-A §1101. Maine Code of Fair Campaign Practices**

**1. Distribution to candidates.** At the time a candidate for the office of Governor, the Senate or the House of Representatives registers with the commission as required under section 1013-A, the commission shall give the candidate a form containing a copy of the Maine Code of Fair Campaign Practices established in this subchapter. The commission shall, at that time, inform the candidate that subscription to the code is voluntary. For the purposes of this subchapter, "code" means the Maine Code of Fair Campaign Practices.

[[PL 1989, c. 802, § 1 (NEW).].]

[ 1989, c. 802, §1 (NEW) .]

**2. The code form.** The code, printed on the form provided to candidates under subsection 1, must read as follows:

"Maine Code of Fair Campaign Practices

I shall conduct my campaign and, to the extent reasonably possible, insist that my supporters conduct themselves, in a manner consistent with the best Maine and American traditions, discussing the issues and presenting my record and policies with sincerity and candor. I shall uphold the right of every qualified voter to free and equal participation in the election process. I shall not participate in and I shall condemn defamation of and other attacks on any opposing candidate or party that I do not believe to be truthful, provable and relevant to my campaign. I shall not use or authorize and I shall condemn material relating to my campaign that falsifies, misrepresents or distorts the facts, including, but not limited to, malicious or unfounded accusations creating or exploiting doubts as to the morality, patriotism or motivations of any party or candidate. I shall not appeal to and I shall condemn appeals to prejudices based on race, creed, sex or national origin. I shall not practice and I shall condemn practices that tend to corrupt or undermine the system of free election or that hamper or prevent the free expression of the will of the voters. I shall promptly and publicly repudiate the support of any individual or group that resorts, on behalf of my candidacy or in opposition to that of an opponent, to methods in violation of the letter or spirit of this code. I, the undersigned, candidate for election to public office in the State of Maine, hereby voluntarily endorse, subscribe to and solemnly pledge to conduct my campaign in accordance with the above principles and practices.

Candidate for Public Office"

[[PL 1989, c. 802, § 1 (NEW).].]

[ 1989, c. 802, §1 (NEW) .]

SECTION HISTORY

1989, c. 802, §1 (NEW). 1989, c. 802, §1 (NEW).

**21-A §1102. Printing of code forms**

The commission shall print, or cause to be printed, copies of the code for distribution to registered candidates. [1989, c. 802, §1 (NEW).]

SECTION HISTORY

1989, c. 802, §1 (NEW).

### **21-A §1103. Acceptance of completed forms**

The commission shall accept, at all times prior to the election, completed code forms that are properly subscribed to by a candidate. [1989, c. 802, §1 (NEW).]

#### SECTION HISTORY

1989, c. 802, §1 (NEW).

### **21-A §1104. Public records**

The commission shall retain for public inspection all completed code forms accepted by the commission under section 1103. A code subscribed to by a candidate is a public record under Title 1, section 408. [1989, c. 802, §1 (NEW).]

#### SECTION HISTORY

1989, c. 802, §1 (NEW).

### **21-A §1105. Subscription to code voluntary**

In no event may a candidate be required to subscribe to or endorse the code. [1989, c. 802, §1 (NEW).]

#### SECTION HISTORY

1989, c. 802, §1 (NEW).